

Introduced by Senator Schiff

February 17, 1999

An act to amend Section 6129 of the Penal Code, relating to criminal conduct of public employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 451, as introduced, Schiff. Criminal conduct by public employees: investigations.

Existing law requires the office of the Inspector General, the Youth and Adult Correctional Agency, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms refer matters involving criminal conduct to the proper law enforcement authorities, and that the entity making a referral to the local district attorney also notify the Attorney General. Existing law further provides that if the local district attorney refuses to accept the case, or has not acted on the matter, as specified, the matter shall be referred to the Attorney General, as specified.

This bill would, instead, provide that the office of Inspector General and the corrections related entities described above refer matters involving criminal conduct to the Attorney General. The bill would provide that nothing in its provisions precludes the district attorney or sheriff from investigating or prosecuting matters not being investigated or prosecuted by the Attorney General. The bill would also provide that upon the occurrence or discovery of a major incident, as defined, the on-scene supervisors shall notify the Office of Internal

Affairs, and that office in turn shall immediately notify the Attorney General.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6129 of the Penal Code is
2 amended to read:

3 6129. (a) Any state employee at any rank and file,
4 supervisory, or managerial level who intentionally
5 engages in acts of reprisal, retaliation, threats, coercion,
6 or similar acts against an employee of either department
7 for having disclosed what the employee, in good faith,
8 believed to be improper activities shall be disciplined by
9 adverse action as provided in Section 19572 of the
10 Government Code. If no adverse action is instituted by
11 the appointing power, the State Personnel Board shall
12 invoke adverse action as provided in Section 19583.5 of
13 the Government Code.

14 (b) In addition to all other penalties provided by law,
15 any state employee at any rank and file, supervisory, or
16 managerial level who intentionally engages in acts of
17 reprisal, retaliation, threats, coercion, or similar acts
18 against an employee of either department for having
19 disclosed what the employee, in good faith, believed to be
20 improper activities shall be liable in an action for damages
21 brought against him or her by the injured party. Punitive
22 damages may be awarded by the court if the acts of the
23 offending party are proven to be malicious. If reliability
24 has been established, the injured party also shall be
25 entitled to reasonable attorney's fees as provided by law.

26 (c) (1) The Inspector General, the Youth and Adult
27 Correctional Agency, the Department of the Youth
28 Authority, the Department of Corrections, the Board of
29 Corrections, the Youthful Offender Parole Board, and the
30 Board of Prison Terms shall refer matters involving
31 criminal conduct to the ~~proper law enforcement~~
32 ~~authorities in the appropriate jurisdiction for further~~
33 ~~action. The entity making a referral to the local district~~



1 ~~attorney shall also notify the Attorney General of the~~
2 ~~action. If the local district attorney refuses to accept the~~
3 ~~case, he or she shall notify the referring entity who shall~~
4 ~~subsequently refer the matter to the Attorney General.~~
5 ~~If the local district attorney has not acted on the matter,~~
6 ~~the referring entity shall notify the Attorney General. It~~
7 ~~is the intent of the Legislature that the Department of~~
8 ~~Justice avoid any conflict of interest in representing the~~
9 ~~State of California in any civil litigation that may arise in~~
10 ~~a case in which an investigation has been or is currently~~
11 ~~being conducted by the Bureau of Investigation by~~
12 ~~contracting when necessary for private counsel. Nothing~~
13 ~~in this section is intended to preclude the district attorney~~
14 ~~or sheriff from investigating or prosecuting matters~~
15 ~~involving the Department of Corrections staff that are~~
16 ~~not being investigated or prosecuted by the Attorney~~
17 ~~General.~~

18 (2) *Upon the occurrence or discovery of a major*
19 *incident, the on-scene supervisors shall immediately*
20 *notify the Office of Internal Affairs. Upon that*
21 *notification, the Office of Internal Affairs shall*
22 *immediately notify the Attorney General.*

23 (3) *As used in this section, "major incident" includes,*
24 *but is not limited to, any use of deadly force, any use of*
25 *force resulting in death or serious injury, any suicide or*
26 *attempted suicide, any unattended death, or any*
27 *allegation of sexual assault.*

